

**§ 239.3 Policy.**

It is DoD policy, in implementing section 3374 of title 42, United States Code, as amended by section 1001 of the ARRA (Pub. L. 111-5), that those eligible (*see* section 239.6 of this part) to participate in the HAP and Expanded HAP are treated fairly and receive available benefit as quickly as practicable.

**§ 239.4 Definitions.**

(a) *Armed Forces.* The Army, Navy, Air Force, Marine Corps, and Coast Guard (see section 101(a) of title 10, U.S.C., as stipulated in section 1001(p) of Public Law 111-5).

(b) *Closing costs.* Sellers' closing costs typically include: loan payoff fees; the real estate commission; title insurance; all or part of transfer taxes and escrow fees, if there are any; attorney's fees where applicable; and other fees set by local custom. HAP pays sellers' closing costs that are customary for the region where the home is located. Applicant's realtor or lender can provide the applicant with the normal closing costs for his/her region. HAP will reimburse the seller for limited contributions made to the buyer's portion of closing costs, including appraisal cost and realtor fees.

(c) *Deficiency judgment.* Judicial recognition of personal liability under applicable state law against a Service member whose property was foreclosed on or who otherwise passed title to another person for a primary residence through a sale that realized less than the full outstanding mortgage balance.

(d) *Deployment.* Performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison or installation duty at the member's permanent duty station, or home port, as the case may be.

(e) *Eligible mortgage.* A mortgage secured by the primary residence that was incurred to acquire or improve the primary residence. For a mortgage refinancing the original mortgage(s) or for a mortgage incurred subsequent to purchasing the property, funds from the refinanced or subsequent mortgages must be traced to the purchase of

the primary residence or have been used to improve the primary residence. Home improvements that are documented (even if not financed through a subsequent mortgage or line of credit) may be added to the purchase price of the primary residence. Funds from a refinanced or subsequent mortgage that were used for other purposes are not eligible and may not be considered. Benefits will be calculated using the amount of \$729,750 for primary residences with an eligible mortgage that exceeds \$729,750. The total benefit payable (excluding allowable closing costs) shall not exceed \$729,750. The ARRA expanded HAP calculates PFMV as the purchase price plus improvements. Improvements are identified in the Internal Revenue Publication #523 (<http://www.irs.gov/publications/p523/ar02.html>) which outlines items considered home improvements and distinguishes improvements from repairs and maintenance.

(f) *Forward deployment.* Performing service in an area where the Secretary of Defense or the Secretary's designee has determined that Service members are subject to hostile fire or imminent danger under section 310(a)(2) of title 37, U.S.C.

(g) *Primary residence.* The one- or two-family dwelling from which employees or members regularly commute (or commuted) to their primary place of duty. Under § 239.6(a) and (b) of this part, the relevant property for which compensation might be offered must have been the primary residence of the member or civilian employee at the time of the relevant wound, injury, or illness. The first field grade officer (or civilian equivalent) in the member or employee's chain of command may certify primary residence status.

(h) *Prior Fair Market Value (PFMV).* The PFMV is the purchase price of the primary residence. Benefits will be calculated using the amount of \$729,750 as the PFMV for primary residences with a PFMV that exceeds \$729,750.

(i) *Purchase.* Purchase occurs when the applicant enters into a contract for the purchase of the property. In the absence of a contract for purchase, the purchase occurs when the applicant closes on the property.

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(j) *Reasonable effort to sell.* Applicant's primary residence must be listed, actively marketed, and available for purchase for a minimum of 120 days. With regard to marketing, applicant must demonstrate that the asking price was within the current market value of the home as determined by the HQUSACE automated value model (AVM) for no less than 30 days. It is the applicant's responsibility to explain marketing efforts by detailing how the asking price was gradually reduced until it reached the true current fair market value (*e.g.*, maintaining a log containing date and asking price recorded over period of time indicating number of visits by prospective buyers and offers to purchase). If an applicant is unable to sell the primary residence, the HQUSACE will determine whether efforts to sell were reasonable.

(k) *Permanent Change of Station (PCS).* The assignment or transfer of a member to a different permanent duty station (PDS), to include relocation to place of retirement, when retirement is mandatory, under a competent authorization/order that does not specify the duty as temporary, provide for further assignment to a new PDS, or direct the military service member return to the old PDS.

### § 239.5 Benefit elections.

Section 3374 of title 42, U.S.C., as amended by section 1001 of the ARRA, Public Law 111–5, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling owned by designated individuals.

(a) *General benefits.* (1) If an applicant is unable to sell the primary residence after demonstrating reasonable efforts to sell (*see* Definitions, § 239.4(i) of this part), the Government may purchase the primary residence for the greater of:

(i) The applicable percentage (identified by applicant type in § 239.5(a)(4) of this part) of the Prior Fair Market Value (PFMV) of the primary residence, or

(ii) The total amount of the eligible mortgage(s) that remains outstanding; however, the benefit payable (excluding allowable closing costs) shall not exceed \$729,750.

(2) If an applicant sells, has sold, or otherwise has transferred title of the primary residence, the benefit calculation shall be the amount of closing costs plus an amount not to exceed the difference between the applicable percentage of the PFMV and the sales price.

(3) If an applicant is foreclosed upon, the benefit will pay all legally enforceable liabilities directly associated with the foreclosed mortgage (*e.g.*, a deficiency judgment).

(4) *Applicable percentages.* (i) If an applicant is eligible under § 239.6(a)(1) or (2) of this part, and sells the primary residence, the applicable percentage shall be 95 percent of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.

(ii) If an applicant is eligible under § 239.6(a)(1) or (2) of this part, and is unable to sell the primary residence after demonstrating reasonable efforts to sell, the applicable percentage shall be 90 percent of the PFMV. Closing costs incurred on the sale may be reimbursed.

(iii) If an applicant is eligible under § 239.6(a)(3) or (4) of this part and sells the primary residence, the applicable percentage shall be 90 percent of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.

(iv) If an applicant is eligible under § 239.6(a)(3) or (4) of this part and is unable to sell the primary residence after demonstrating reasonable efforts to sell, the applicable percentage shall be 75 percent of the PFMV. As noted under paragraph (a)(1) of this section, however, the applicant may instead be eligible for payment of the eligible mortgage outstanding.

(b) *Rules applicable to all benefit calculations.* (1) Prior to making any payment, the Government must determine that title to the property has been transferred or will be transferred as the result of making such payment. If the Government determines that making a benefit payment will not result in the transfer of title to the property, no payment will be made.